



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Whether Land Located in the Town  
of Lac du Flambeau, Vilas County, Owned by the  
Fence Lake Lodge Properties, LLC, and Enrolled  
Under Forest Crop Law Order  
#64-005-1965 Should be Withdrawn from the Forest  
Crop Law Program

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Case No. DNR-13-072

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER FOR WITHDRAWAL OF FOREST CROPLAND**

On October 22, 2013, the Department filed a Request for Hearing with the Division of Hearings and Appeals. Pursuant to due notice, hearing was held at Eagle River, Wisconsin on February 5, 2014, Jeffrey D. Boldt, Administrative Law Judge presiding.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Fence Lake Lodge Properties, LLC, by

Attorney Thomas E. Lawrence, II  
Lawrence & Tyler, S.C.  
8617 Highway 51 North  
Minocqua, WI 54548

Department of Natural Resources, by

Attorney Quinn Williams  
DNR – Legal Services  
P. O. Box 7921  
Madison, WI 53707-7921

**FINDINGS OF FACT**

1. The Department of Natural Resources (DNR or Department) on its own motion has investigated and seeks a hearing to determine whether 36.100 acres of land owned by Fence Lake Lodge Properties, LLC, within the SWNW, T40N, R5E, Section 13 in the Town of Lac du Flambeau, Vilas County should continue as Forest Cropland under Wis. Stat. § 77.02.

2. Pursuant to Wis. Stat. § 77.02 in 1965 and 77.02(1), required that the owner of any tract of land of not less than 40 acres may file with the Department a petition to enroll lands into the Forest Crop Law (FCL).

3. By Order No. FC-2312, the DNR on January 1, 1965, enrolled the following 240 acres of land owned by Mosinee Paper Mills Company (Mosinee Paper) into the FCL for a contract period of 50 years. The FCL entry included the following lands:

Township 40 North, Range 04 East		Total Acres
Section 25	SESE	40.000
Section 35	NENE	40.000
Section 36	NENE, NWNE	80.000

Township 40 North, Range 05 East		Total Acres
Section 13	SWNW, SENW	80.000

*Total acreage for this Order: 240.000*

4. In 1965, Wis. Stat. § 77.03 affirmed that with the passage of the FCL, a petition by the owner, and the making and recording of the order shall constitute a contract between the state and the owner, running with said lands, for a period of 50 years, unless terminated as otherwise provided in law. In 1965, Wis. Stat. § 77.10(b) required that the Department issue a notice of transfer whenever any owner of forest crop lands conveys such lands to a new purchaser. In 1965, Wis. Stat. § 77.10(1)(a) required that for any forest crop lands that are not meeting the requirements set forth in Wis. Stat. § 77.02, the entry of such lands shall be cancelled.

5. On or about September 3, 2013, the Department became aware that the following lands owned by Fence Lake Lodge Properties, LLC, c/o Rich Scheck did not meet the FCL requirement in that lands must be a minimum of 40 acres.

Township 40 North, Range 05 East		Total Acres
Section 13	SWNW	36.100

6. At the time of entry of the parcel described above, the FCL program required by then Wis. Stat. § 77.02(1), that a parcel be “not less than 40 acres.” (Ex. 28)

7. The FCL program is an enforceable contract binding both a program participant and the State of Wisconsin to specific terms and conditions.

8. Under the terms of the FCL contract, the owner has an obligation to report property transfers to the DNR within 30 days of such a transfer. (Lambert)

9. Mosinee Paper transferred ownership of the subject parcel to Norill, Inc., on June 30, 1989, and filed a FLC Transfer of Ownership form with the State of Wisconsin DNR on August 28, 1989. (Ex. 2)

10. Norill, Inc. deeded to the Lac du Flambeau band of Lake Superior Chippewa Indians the following lands on July 30, 2004:

The Southeast Quarter of the Northwest Quarter (SE ¼ NW ¼), Section Thirteen (13), Township Forty (40) North, Range Five (5) East of the Fourth Principal Meridian, Township of Lac du Flambeau, Vilas County, Wisconsin.

EXCEPTING THEREFROM that part thereof lying North of East Fence Lake Road.

(Ex. 6)

11. On February 3, 2005, a Warranty Deed was recorded transferring ownership of Parcels A and C (see legal description in Ex. 7) from Norill, Inc. to Fence Lake Properties, Inc. (Note: this is not the same corporate entity or ownership as the owner of FCL#64-005-1965, which has the similar name of Fence Lake Properties, LLC)

12. On November 22, 2005, the Wisconsin DNR was informed that 3.93 acres of the parcel described above was to be withdrawn from the FLC program by Fence Lake Properties, Inc. paid the Withdrawal Tax calculated by the State of Wisconsin DOR.

13. The 3.93 acres were officially withdrawn from the FCL program by a recorded DNR Withdrawal Order dated October 9, 2006. (Ex. 13)

14. On April 28, 2005, Norill, Inc. recorded a warranty deed transfer of a parcel which included the 36.1 acre parcel identified in FCL #64-05-1965 to Rick Scheck and Paul Hite as tenants in common. (Ex. 16)

15. Norill, Inc. did not file a FCL Transfer of Ownership form with the DNR when it split ownership of its two parcels into three owners in 2004 and 2005 as described above. (Lambert; Ex. 22; See: Ex.4 color-shaded areas)

16. On July 6, 2005, Rick Scheck and Paul Hite recorded a warranty deed transferring ownership of the parcel identified in Finding of Fact # 14 above, including the 36.1 acre parcel identified in FCL #64-05-1965 to Fence Lake Lodge Properties, LLC, current owner of the parcel subject to this Order. (Ex. 17) Mr. Scheck remains a principal with Fence Lake Lodge Properties, LLC.

17. The parcel described in Finding of Fact # 5 above is less than 40 acres and does not meet pre-1972 FCL program requirements at the time the parcel was entered. (Lambert) It must accordingly be withdrawn, pursuant to the Department's consistent policy and practice and the terms of the enforceable contract set by the legislature at the time the land was entered into the FCL program.

18. Accordingly, the Division finds that the lands described are not meeting the requirements set forth in § 77.02 and the department of natural resources shall accordingly cancel the entry of such description and issue an order of withdrawal, and the owner shall be liable for the tax and penalty. When any description ceases to be a part of the forest croplands, by virtue of any order of withdrawal issued by the department of natural resources, taxes thereafter levied thereon shall be payable and collectible as if such description had never been under Chapter 77.

## DISCUSSION

Through very little fault of the current owner, the parcel subject to this Order, consisting of the 36.1 acres described in Finding of Fact 5 above, has not been eligible for FCL tax treatment since the parcel became less than the 40 acres required of pre-1972 entries into the program. It appears that Mr. Scheck was given bad advice at the time he acquired the property which included the 36.1 acres entered into the FCL and was unaware that the parcel did not meet the program requirements. Further, because documents disclosing transfer of ownership were not filed with the DNR by Norill, Inc. at the time it split ownership of its parcels, the Department was not officially aware in its records that the lands subject to this withdrawal order no longer met FLC program requirements. A parcel could be less than 40 acres and still meet the pre-1972 requirement if it was contiguous to another parcel under common ownership. (Lambert)

This was true of the original entry of the subject parcel into the FCL. The 80 acres entered into the FCL program were divided into three separate parcels, as reflected in Exhibit 4. The area depicted in yellow represents the 3.93 acres which were withdrawn from the program. The area in pink remains a 40 acre parcel owned by the Lac du Flambeau band of Lake Superior Chippewa. The area depicted in green represents the 36.1 acres described in Exhibit 5 and owned by Fence Lake Lodge Properties, LLC. This parcel is less than 40 acres and is accordingly no longer eligible for the FCL program as a matter of law.

It is unfortunate that the 50 year contract of FCL #64-005-1965 was set to expire on December 31, 2014. However, neither the Department nor the ALJ have any discretion in this matter to ignore the clear requirement of the enforceable contract set by the legislature at that time. The owners' best arguments in equity may possibly be directed at others who are not a party to this proceeding. (Ex. 102) However, what is clear is that none of the equitable arguments made by the owner are available in this administrative setting.

Similarly, Fence Lake Properties, LLC does not meet the DNR guidelines for an Exempt Withdrawal as set forth in the Department's WDNR Forest Tax Law Handbook, because the land was not conveyed to a governmental unit for a park, utility right-of-way or any of the other public uses identified in Exhibit 101. (Lambert)

The lands must be withdrawn and back taxes paid, pursuant to the DNR's longstanding policy and practice and the plain language of the governing statute at the time the lands were entered into the FCL program.

## CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary Orders in cases relating to withdrawal of lands from the forest cropland program pursuant to Wis. Stat. §§ 227.43 and 72.10.

2. The lands described above were eligible for entry into the program at the time of entry pursuant to Wis. Stat. § 77.02.

3. Wisconsin Stat. § 77.10(1) provides that the Department of Natural Resources may at any time cause investigation to be made as to whether lands entered under the forest cropland law should continue to be so entered.

4. At the time of entry of the parcel described above, the FCL program required by then Wis. Stat. § 77.02(1), that a parcel be “not less than 40 acres.” (Ex. 28)

5. The parcel described above is less than 40 acres and is accordingly no longer eligible for the FCL program as a matter of law.

### ORDER

IT IS HEREBY ORDERED that the lands described above in Finding No. 5 above be Withdrawn from the Forest Crop Law program.

IT IS FURTHER ORDERED that the tax due by the owner as determined by the Wisconsin Department of Revenue and the penalty thereon shall be paid to the Department of Natural Resources prior to the last day of February, 2015 pursuant to Wis. Stat. §§ 77.10(1)(a), 77.10(2), and 77.04(1). If unpaid, the taxation district shall enter the delinquent amount on the property tax roll as a special charge.

IT IS FURTHER ORDERED that a copy hereof be transmitted forthwith by the Department of Natural Resources to the Wisconsin Department of Revenue, to the Clerk of the Town of Lac du Flambeau, to the Register of Deeds of Vilas County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on March 6, 2014.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Jeffrey D. Boldt  
Administrative Law Judge

### NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.